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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,081	10/08/2003	Teruhiko Ueyama	1232-5172	6248
27123 7590 10/14/2008 MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
EXAMINER				
MISLEH, JUSTIN P				
ART UNIT		PAPER NUMBER		
2622				
NOTIFICATION DATE		DELIVERY MODE		
10/14/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com

Shopkins@Morganfinnegan.com

jmedina@Morganfinnegan.com

Office Action Summary

Application No.

10/681,081

Applicant(s)

UEYAMA, TERUHIKO

Examiner

JUSTIN P. MISLEH

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 7 and 9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1 - 7 and 9 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 16, 2008 has been entered.

Response to Arguments

2. Applicant's arguments filed July 16, 2008 have been fully considered but they are not persuasive.

3. Applicant argues, "Applicant's image sensing apparatus, however, determines whether to perform exposure correction, 'even if the image sensing apparatus is set to an auto exposure control mode' as recited in amended claim 1. Thus, there may exist conditions wherein Applicant's image sensing apparatus does not correct the exposure error even if it is set in automatic exposure control mode. This determination is made based upon a setting state, an operation state, and an object brightness state during image sensing. Noriyuki, on the other hand, always performs exposure correction during automatic exposure operation. Applicant respectfully asserts that since Noriyuki does not teach a determination device which may refrain from correcting the exposure error during automatic operation, claim 1 is not anticipated by Noriyuki."

4. The Examiner respectfully disagrees with Applicant's interpretation of the claim language. The limitation in question recites, "a determination device which determines whether or not to correct the exposure error on the basis of at least one of a setting state of the image sensing apparatus in image sensing, an operation state of the image sensing apparatus, and an object brightness state in image sensing, even if the image sensing apparatus is set to an auto exposure control mode". This language does not preclude the possibility of the "setting state" or the "operation state" corresponding to an "auto exposure mode". In other words, either the "setting state" or the "operation state" could actually correspond to the "auto exposure mode". So, the language in actuality may be interpreted as a determination device which determines whether or not to correct the exposure error on the basis of an auto exposure mode.
5. Therefore, as stated in the Final Office Action mailed April 22, 2008 (see item 6) contrary to Applicant's position, Noriyuki discloses, as stated in paragraph 0050, that the exposure is assumed correct during an automatic exposure operation and is assumed to have errors during a manual exposure operation. Noriyuki first determines whether the image sensing apparatus is in a manual exposure mode or an automatic exposure mode. Based on this determination, Noriyuki knows whether or not to perform exposure correction.
6. For these reasons, the Examiner will maintain the rejection.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. **Claims 1, 4, 5, 7, and 9** are rejected under 35 U.S.C. 102(b) as being anticipated by Noriyuki (JP 2000-069356 A).

9. For the following rejections, the Examiner will rely upon a computer translation of Noriyuki. Additionally, Claims 1 and 7 appear to be corresponding apparatus and method claims – accordingly, they will be rejected together. Finally, the Examiner's response to arguments above is fully incorporated in the rejections below.

10. For **Claims 1 and 7**, Noriyuki discloses, an image sensing apparatus comprising:

a first exposure level calculation device (drawing 5, exposure control value operation part 201) which performs photometry for image sensing to calculate a first exposure level (page 6, paragraph 35, noted that 201 computes an exposure control value using the photometry data inputted from the photometry section) upon an image sensing preparation instruction by an image sensing preparation instruction member (drawing 5, shutter carbon button 9, page 6, paragraph 38, noted that when the shutter button is pushed, control section 20 drives the photometry section 3 to carry out the exposure control value operation, which is the exposure calculation);

a second exposure level calculation device (drawing 5, exposure level operation 202) which calculates a second exposure level (page 6, paragraph 36, noted that 202 computes the exposure level of the photographed image.) of an image signal output after image sensing;

a determination device (control section 20; see paragraph 0033) which determines whether or not to correct the exposure error (page 6, paragraph 36, noted that 203 calculates the gain alpha for amending the exposure level by comparing the data obtained from 201 and 202)

on the basis of at least one of a setting state of the image sensing apparatus in image sensing, an operation state of the image sensing apparatus, and an object brightness state (drawing 6, photographic subject brightness #3, page 6, paragraph 39, noted that the brightness value is computed in this state) in image sensing, even if the image sensing apparatus is set to an auto exposure control mode (see Examiner's explanation below), and;

an exposure error correction device (drawing. 5, level amendment section 19) which performs a correction operation of the exposure error (page 6, paragraph 33 and page 8, paragraph 54, noted that the 19 amplifies the level of each pixel data by gain alpha and performs level amendment of the image data) by using the exposure error calculated by said exposure error calculation device, when it is determined by said determination device to correct the exposure error (page6, paragraph 33, noted that level amender 19 performs level amendment based on the amendment gain 203 inputted from a control section 20).

Noriyuki discloses a situation where instead of an automatic exposure operation, a manual exposure operation is carried out by the photographer. Noriyuki states in this regard, "Since it extracts based on the photographic subject brightness B_vC and a value A_v and the exposure time T_v are set up when exposure level of an image pick-up image is not expressed and an error arises neither in the photometry value of the photometry section 3 nor exposure control of CCD 10 nor the throttling control of diaphragm 12 at the time of photography, naturally this exposure level A_vC serves as $A_vC=K$ (correct exposure level) ... [however,] it is general for an error to arise with one which participates in exposure control in fact of elements, and to become $A_vC!=K$... [the] gain alpha for exposure level amendment shows the signal

amplification factor for performing level adjustment of exposure level so that it may become with $AveC=K$ in $AveC!=K$ " (see Noriyuki, paragraph 0050, computer translation).

In other words, the exposure is assumed correct during an automatic exposure operation and is assumed to have errors during a manual exposure operation. This determination is not made based upon the magnitude of the presumed error, rather it is based upon at least the operation state/setting state. The claim language does not preclude the possibility of the "setting state" or the "operation state" corresponding to an "auto exposure mode". In other words, either the "setting state" or the "operation state" could actually correspond to the "auto exposure mode". So, the language in actuality may be interpreted as a determination device which determines whether or not to correct the exposure error on the basis of an auto exposure mode. Therefore, Noriyuki discloses a situation where, "a determination device which... determines not to correct the exposure error in a case that at least one of the setting state ..., the operation state ..., and the object brightness state, even if the image sensing apparatus is set to an auto exposure mode", as now claimed.

11. As for **Claim 4**, Noriyuki teaches the apparatus according to claim 1, wherein the operation state (drawing 6 and page 6, paragraph 37, the flow chart of photography e actuation of the digital camera) of the image sensing apparatus includes a state in which an image sensing processing start instruction is received from an image sensing start instruction member (drawing 5, shutter carbon button 9) before an end (drawing 6, the operation state from #1 to #2 and page 6, paragraph 38, the shutter button is pushed at #1 before the completion of operation state #2) of a first exposure level calculation processing (drawing 6, photometry data #2, page 6 paragraph 38, photometry data is used to carry out the exposure control value operation 201) by said first

exposure level calculation device (201) that Starts upon reception of an image sensing processing preparation start instruction (drawing 6, the operation state from #1 to #2 and page 6, paragraph 38, the shutter button is pushed at #1 to start the instruction and to change the operation state to #2) by the image sensing preparation instruction member (drawing 5, shutter carbon button 9), and when the image sensing processing start instruction is received before the end (drawing 6, the operation state from #1 to #2 and page 6, paragraph 38, the shutter button is pushed at #1 before the completion of operation state #2) of first exposure level calculation processing (drawing 6, photometry data #2, page 6 paragraph 38, photometry data is driven by control section 20 to carry out the exposure control value operation 201) by said first exposure level calculation device (201), an image is sensed at an exposure value (drawing 6, photometry data #2, photometry data is computed at this .state) obtained during first exposure level calculation processing, said exposure correction calculation device (drawing 5, the amendment gain operation 203) calculates the correction amount of the exposure error value (page 6, paragraph 36, noted that 203 calculates the gain alpha for amending the exposure level by comparing the data obtained from 201 and 202) by using information in first exposure level calculation (201) so as to obtain a sensed image at correct exposure, and said exposure error correction device (drawing 5, level amendment section 19) corrects the exposure error of the sensed image by using the correction amount (page 6, paragraph 33 and page 8, paragraph 54, noted that the 19 amplifies the level of each pixel data by gain alpha and performs level amendment of the image data).

12. As for **Claim 5**, Noriyuki teaches the apparatus according to claim 4, wherein when the image sensing processing start instruction is received (page 6, paragraph 38, the shutter button is

pushed at #1 to start the photography actuation of the camera) before the end (drawing 6, the operation state from #1 to #2 and page 6, paragraph 38, the shutter button is pushed #1 before the completion of operation state #2) of first exposure level calculation processing (drawing 6, photometry data #2, page 6, paragraph 38, photometry data is used to carry out the exposure control value operation 201) by said first exposure level calculation device (201), and the setting state of the image-sensing apparatus includes at least one of a state (drawing 6, operation state #8) in which an exposure correction value is set (page 8, paragraph 54, noted that control section 20 sets the gain alpha as the level amendment section 19), a state in which an exposure condition obtained by photometry is held, a state in which a photometry method is set to spot photometry, a state in which a manual exposure mode is set, and a state in which a long shutter mode is set, exposure starts (drawing 6, #5 and page 7 paragraph 41, noted that the charge storage/exposure of CCDIO starts) after a correct exposure value is calculated (page 8, paragraph 54, noted that control section 20 sets the gain alpha as the level amendment section 19) at the end of calculation processing by said first exposure level calculation device (201).

13. As for **Claim 9**, Noriyuki teaches a computer-readable recording medium (drawing 5, image memory 18) characterized by recording a program (page 6, paragraph 34, noted that the control section 20 carries out the centralized control of the photography actuation of the camera and it consists of a microcomputer which executes the processes of the exposure calculation. Thus it is an inherent feature that these programs are stored in a computer-readable recording medium to be executed by the microcomputer) defined in Claim 7.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. **Claims 2 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Noriyuki (JP 2000-069356 A) in view of Kubo (US 7,030,911 B1).

16. As for **Claim 2**, Noriyuki teaches all claimed limitation with the exception that he does not explicitly teach the apparatus according to claim 1, wherein the setting state of the image sensing apparatus includes at least one of a state in which an exposure correction value is set, a state in which an exposure condition obtained by photometry is held, a state in which a photometry method is set to spot photometry, a state in which a manual exposure mode is set, and a state in which a long shutter mode is set, and when any one of the states is set, said exposure correction calculation device does not correct the exposure error.

In an analogous art, Kubo teaches a digital camera exposure control method comprises of a setting state (fig. 6 and col. 7 lines 15-20, noted that the flow chart depicts the operation state of the digital camera) of the image sensing apparatus includes at least one of a state in which an exposure correction value is set, a state in which an exposure condition obtained by photometry is held, a state in which a photometry method is set to spot photometry, a state in which a manual exposure mode is set, and a state in which a long shutter mode (col. 7 lines 48-56, noted that when S2 switch is not pressed and S1 switch continues being on for not less than the predetermine time, it is determined that the exposure time is long) is set, and when any one of the

states is set, said exposure correction calculation device does not calculate the correction amount of the exposure error value (col. 7, lines 48-56, since that when the operation state is returned back to #5, the exposure control value #27 will not be carried out in use), and said exposure error correction device does not correct the exposure error (col. 7, lines 48-56, since that when the operation state is returned back to #5, the exposure control value #27 will not be carried out in use, thus there will be no correction amount be used to correct the exposure error) of the sensed image.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the device of Noriyuki by incorporating the method of setting the long exposure mode as taught by Kubo in order to have the advantage of power saving feature in preventing the execution of rest of the operation states.

17. As for **Claim 6**, Noriyuki teaches all the claimed limitation with the exception that he does not explicitly teach the apparatus according to claim 1, wherein, in an operation state in which an image sensing start instruction member is not pressed is held for not less than a given threshold time after the image sensing preparation instruction member is pressed, said exposure correction calculation device does not calculate the correction amount of the exposure error value, and said exposure error correction device does not correct the exposure error of the sensed image.

In an analogous art, Kubo teaches a digital camera exposure control method comprises of an operation state (fig. 6 and col. 7 lines 15-20, noted that the flow chart depicts the operation state of the digital camera) in which an image sensing start instruction member (fig. 6, S2 switch #23) is not pressed is held for not less than a given threshold time (col. 7 lines 48-56, noted that

when S2 switch is not pressed and S1 switch continues being on for not less than the predetermine time, it is determined that the user has no intention to perform shooting and the processing state will return back to state #5) after the image sensing preparation instruction member is pressed (fig. 6, S1 switch #17, col. 7 lines 49-51, S1 switch is on), said exposure correction calculation device does not calculate the correction amount of the exposure error value (col. 7, lines 48-56, since that when the operation state is returned back to #5, the exposure control value #27 will not be carried out in use), and said exposure error correction device does not correct the exposure error (col.7, lines 48-56, since that when the operation state is returned back to #5, the exposure control value #27 will not be carried out in use, thus there will be no correction amount be used to correct the exposure error) of the sensed image.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the device of Noriyuki by incorporating the method of setting the threshold time for the shutter switch button in controlling the operation state as taught by Kubo in order to have the advantage of power saving feature in preventing the execution of rest of the operation states.

18. **Claims 3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Noriyuki (JP 2000-069356 A) in view of Numata et al. (US 6,654,062 B1).

19. As for **Claim 3**, Noriyuki teaches all the claimed limitation with the exception that he does not explicitly teach the apparatus according to claim 1, wherein the setting state of the image sensing apparatus includes a state in which a flash is so set as to emit light, and when the flash is so set as to emit light, a correction width of the correction amount of the exposure error

value is changed in consideration of at least one of a flashlight amount, a distance to an object, a stop state, and a setting sensitivity.

In the same field of endeavor, Numata teaches an electronic camera comprises a flash unit. Wherein, he discloses a state (col. 5, line 43, flash exposure mode) in which a flash is so set as to emit light (col. 6, lines 50-55, noted that flash exposure is performed), and when the flash is so set as to emit light, a correction width of the correction amount of the exposure error value is changed (col. 6, lines 55-60, noted that the aperture, shutter speed and gain amplifier are changed according to the value of optimum flash exposure) in consideration of at least one of a flashlight amount (col. 6, lines 50-55, noted that the optimum flash exposure is computed), a distance to an object, a stop state, and a setting sensitivity.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the state of performing flash exposure as taught by Numata in Noriyuki's device in order to adjust the aperture of iris, shutter speed and gain values corresponding to the change of the flash amount (col. 6, lines 50-60, noted that these parameters change based on the value of optimum flash exposure).

Conclusion

20. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Justin P Misleh whose telephone number is 571.272.7313. The Examiner can normally be reached on Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Sinh Tran can be reached on 571.272.7564. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**/Justin P. Misleh/
Primary Examiner
Group Art Unit 2622
October 10, 2008**